

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK
AND VICINITY ANNUITY FUND**

AMENDED RESTATED COLLECTIONS POLICY

WHEREAS, the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund (hereinafter referred to as the "Trustees") have a duty under the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended (hereinafter referred to as "ERISA") to make all reasonable efforts to collect all Employer contributions, including interest and liquidated damages thereon, owed to the Iron Workers District Council of Western New York and Vicinity Annuity Fund (hereinafter referred to as "Fund"); and

WHEREAS, pursuant to various collective bargaining agreements between certain employers or their representatives (hereinafter referred to as "Employers"), and International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers Local Union Nos. 33, 9, 440, 6, and 12, or any local union affiliated with the International Association of Bridge, Structural or Ornamental Iron Workers, AFL-CIO (hereinafter referred to as the "Union"), Employers are required to make prompt payments of the contributions owed to the Fund and are bound by the Restated Agreements and Declarations of Trust of the Fund (hereinafter referred to as the "Trust Agreement"); and

WHEREAS, Article IV of the Fund's Trust Agreement empower the Trustees to demand, collect and receive Employer payments and all other money and property to which the Fund may be entitled, and to take such steps including the institution and prosecution of, or the intervention in any proceeding at law, or in equity, or in bankruptcy, as may be necessary or desirable, in their sole discretion, to effectuate the collection of such Employer contributions; and

WHEREAS, Article V of the Fund's Trust Agreement authorizes the Trustees of the Fund to promulgate any and all such rules and regulations as they deem necessary to facilitate the administration of the Fund, including such rules and regulations as are required to govern the process for the collection of Employer payments pursuant to Article IV; and

WHEREAS, Section 515 of ERISA requires every Employer who is obligated to make contributions to the Fund under the terms of any collective bargaining agreement to make such contributions as are required in that agreement; and

WHEREAS, in keeping with the relevant provisions of the Trust Agreement, it is deemed desirable by the Trustees to formulate a written policy to be applied uniformly to the collection of Employer contributions, containing certain terms and conditions governing the payment of Employer contributions to the Fund;

NOW, THEREFORE, it is resolved that the Trustees hereby adopt a Collections Policy as follows:

Section 1. Remittance Reports; Payment of Contributions; Late Payments.

(a) All reports and payments to the Fund must be received on or before the fifteenth (15th) day of the month following the month during which the hours, for which contributions are required, are worked.

(b) If no report or payment has been received by the Fund on or before the (15th) day of the month following the month during which hours are worked and for which contributions are required, the Fund will pursue whatever avenues they deem appropriate to collect the delinquencies, including, but not limited to, notifying such Employer that the contributions are late. A copy of such notification is to be forwarded to the applicable Local Union Business Representative. If notification is sent, it will state that unless the contributions are received by the 30th of the month, interest,

calculated at the rate of fourteen percent (14%) per annum from the 15th day of the month, will be due in addition to the delinquent contributions.

(c) If no payment has been received by the Fund on or before the thirtieth (30th) day of the month following the month during which hours are worked and for which contributions are required, the Employer will be assessed interest on the amount of delinquent contributions at the rate of fourteen percent (14%) per annum, calculated from the date the contributions were due as described in paragraph (a) until the date the Fund receives payment.

(d) If no payment has been received by the Fund within sixty (60) days of the due date set forth in paragraph 1(a), the Employer will be assessed liquidated damages in the amount of twenty percent (20%) of the delinquent contributions, auditing fees, attorneys' and paralegals' fees, and all costs in addition to interest computed pursuant to paragraph (c) above.

(e) If no payment has been received by the Fund within ninety (90) days of the due date set forth in paragraph 1(a), the Employer's delinquent account may be referred to the Fund's Counsel to seek recovery of the delinquent contributions plus the interest, liquidated damages, audit fees, attorneys' and paralegals' fees and costs. If the Fund's Counsel performs legal services, which may include (but are not limited to) the commencement of legal or agency proceedings against the Employer, to recover the amounts owed to the Fund pursuant to this section, the Employer will reimburse the Fund for all attorneys' fees and paralegals' fees, auditing fees, and all costs incurred by the Fund in attempting to collect and in collecting the Fund' monies.

(f) In the event the Fund does not commence a lawsuit or other proceedings to collect delinquent fringe benefit contributions, in the event a lawsuit (or other proceedings) is settled prior to a judgment or resolution being obtained by the Fund, or in the event the delinquent contributions are

paid either prior to commencement of the lawsuit or proceedings or prior to judgment or other resolution, the Fund is still entitled to collect, and the delinquent Employer is still obligated to pay, the interest, liquidated damages, costs, attorneys' and paralegal fees set forth in this Policy.

(g) An Employer that ceases to perform work in a Union's territory is obligated to submit a final report to the Fund stating that it has no further work in the Union's territory.

(h) Except as may be otherwise required by law, the Trustees, in accordance with their fiduciary obligations to act in the sole interest of the Fund and the participants and beneficiaries, shall have the power and authority, in their sole discretion, to allocate and disburse payments remitted by an Employer and shall have the power and authority, in their sole discretion, to allocate and disburse payments to current obligations or past due obligations of the Employer. Such allocation and disbursement shall be binding upon the Employer; the Employer's request that the Fund allocate and disburse payments in a particular manner and/or a different manner than chosen by the Fund shall be of no force and effect.

Section 2. Payment of Contributions; Late Payment (Weekly Method)

(a) If an Employer fails to remit its fringe benefit contribution payments on or before the thirtieth (30th) day of the month following the month during which the hours are worked [i.e., within fifteen (15) days of the date set forth in Section 1(a)] and if such a delinquency occurs three times in any consecutive six (6) month period, that Employer will thereafter, at the discretion of the Trustees, be required to make the payments on a weekly basis; all payments will be required no later than seven (7) days following the end of the weekly payroll period during which the hours, for which contributions are required, are worked.

(b) If no payment has been received by the Fund on or before the seventh (7th) day following the end of the weekly payroll period during which hours are worked, and for which contributions are required, the Employer will be assessed the applicable interest, liquidated damages, attorneys' and paralegals' fees and costs as set forth in Section 1 of this Policy.

Section 3. Audit of Payroll Records.

(a) Article IV, Section 4, of the Fund's Trust Agreement is incorporated herein. The Trustees may at any time examine and copy such books, records, papers, or reports of any Employer, as they deem necessary, to permit them to determine whether the Employer is making full and proper reports and payments to the Fund. Such records include, but are not limited to, all payroll records (including, but not limited to, payroll journals, time cards, printouts, ledgers and any other form of payroll records) of all employees (including, union, non-union, bargaining unit and non-bargaining unit employees) and subcontractors, hours reports, payroll tax records submitted to Federal and State agencies (including, but not limited to, Forms 941 and W-2's), complete business income tax returns, cash disbursements journals, general ledgers, 1099's, and names and social security numbers of all employees (including, union, non-union, bargaining unit and non-bargaining unit employees). Further, the Trustees may examine whatever records they deem necessary to permit them to allocate an Employer's contribution obligation to specific projects and to determine whether the Employer is complying with its obligations to remit payment for work performed on such project(s). The examination will cover the period of time that the Employer has been signatory to a collective bargaining agreement or other written agreement requiring contributions to the Fund.

(b) Such examination will occur whenever such examination is deemed necessary or advisable by the Trustees and, except as indicated below, at no charge to the Employer. If it is found

by the Trustees, however, that the Employer has violated its obligations under the rules, regulations and/or Trust Agreement of the Fund including, but not limited to, its obligation to timely remit fringe benefit contributions to the Fund, then the Employer will reimburse the Fund for all auditing charges for examining the Employer's books, except where the Trustees determine, in their sole and absolute discretion, that such violation has been uncovered by the Fund during the course of their routine cyclical audit of the Employer, the Employer has not previously incurred a delinquency with the Fund, and the delinquency consists of minor shortages of hours for months and employees that the Employer had previously reported to the Fund.

(c) The Trustees may, by their representatives, conduct such examination at the Employer's place of business or they may require, in the case of an Employer with offices outside the Union's geographic jurisdiction, that the Employer produce said records for examination at the Fund' offices. If the Employer fails to comply with this requirement and the Trustees or their representatives are required to travel to the Employer's offices outside the Union's geographic jurisdiction, the Employer is liable for all travel expenses of the Trustees or their representatives, including, but not limited to, airfare, transportation, lodging, and meals. If it is necessary for Fund's Counsel to perform legal services to implement this requirement, the Employer is liable for all attorneys' and paralegal fees, costs and disbursements.

(d) If it is necessary for the Fund's Counsel to perform legal services, including the commencement of a lawsuit or other proceedings, to obtain the audit and to compel the Employer's production of its payroll records, then in that event, the Employer will be liable for all auditing fees, attorneys' and paralegal fees, court costs, disbursements and expenses incurred by the Fund in enforcing the Fund' right to audit and/or examine the Employer's books, regardless of whether the

Employer is delinquent in payment of contributions or in violation of any of its other obligations under the rules, regulations and/or Trust Agreement of the Fund.

(e) Employers are obligated to maintain complete and accurate records of the number of hours of bargaining unit work performed on a monthly basis by each and every individual, including, but not limited to, corporate officers, directors, members and shareholders, and spouses, children, parents and/or siblings of corporate officers, members, directors, and/or shareholders. If the Employer does not maintain or otherwise have in its possession such complete and accurate records and the Fund otherwise has evidence that an individual has performed some bargaining unit work for the Employer, the Employer agrees that the Fund is entitled to presume that the individual performed a minimum of forty (40) hours per week of bargaining unit work for fifty-one (51) weeks during the calendar year. The Employer further agrees that in these circumstances the Fund shall be entitled to recover contributions at the Journeyman's rate set forth in the applicable collective bargaining agreement for a total of the two thousand forty (2,040) hours for the calendar year. The two thousand forty hours (2,040) per year shall be paid at the rate of one hundred seventy hours (170) per month for each and every month. Contributions must be paid by the Employer pursuant to this Section regardless of the amount of bargaining unit work actually performed by the individual, regardless of the amount of compensation paid, if any, to the individual during the month or calendar year, and regardless of whether the individual is listed as an employee on the Employer's records.

(f) A formula may be utilized to calculate the delinquency owed by the Employer, as

follows:

- i. If the Employer fails to:
 1. submit the required remittance reports within thirty (30) days after written demand by the Fund or their representatives;
 2. respond to a request for an audit and schedule the audit within the thirty (30) days after written demand by the Fund or their representatives (the audit need not be conducted within such thirty (30) days);
 3. allow the auditor to conduct the audit within sixty (60) days after written demand by the Fund or their representatives; or
 4. produce all requested books and records for the audit within thirty (30) days after the scheduled date and commencement of the audit,

the Trustees, or their agents, may compute the contributions due for the audit period by: (1) identifying the month, during the twelve (12) consecutive calendar months prior to the audit period, having the largest number of hours reported and submitted by the Employer to the Fund [hereinafter "Base Month"]; (2) multiplying the hours in the Base Month by ten percent (10%) and adding that ten percent (10%) figure to the Base Month hours to arrive at the monthly unpaid hours [hereinafter "Base Month Unpaid Hours"]; (3) determining whether there was an audit disclosing unreported hours for the Base Month and, if so, taking

the amount of said unreported hours plus ten percent (10%) thereof and adding that figure to the Base Month Unpaid Hours; (4) multiplying the Base Month Unpaid Hours (plus any additional hours pursuant to no. (3)) by the number of months under audit to arrive at the total unpaid hours for the audit period [hereinafter "Total Unpaid Hours"]; (5) multiplying the Total Unpaid Hours by the journeyman contribution rate (determined by the geographic area of the Employer's place of business) for the audit period to arrive at the total unpaid contributions [hereinafter "Total Unpaid Contributions"] for the audit period; and (6) subtracting the amount remitted by the Employer to the Fund for the audit period from the Total Unpaid Contributions to arrive at the balance due [hereinafter "Balance Due"]. The Balance Due so computed shall be binding on the Employer and shall be deemed the amount due from the Employer for the purpose of any legal or administrative proceeding and shall be in addition to any monies set forth by the Employer on any remittance reports or payroll records which it subsequently provides to the Fund for the audit period.

- ii. If the Employer submits remittance reports, but thereafter fails to:
 - 1. respond to a request for an audit and schedule the audit within the thirty (30) days after written demand by the Fund or their representatives (the audit need not be conducted within such thirty (30) days);

2. allow the auditor to conduct the audit within sixty (60) days after written demand by the Fund or their representatives; or
3. produce all requested books and records for the audit within thirty (30) days after the scheduled date and commencement of the audit,

the Trustees, or their agents, may compute the contributions due for any month by: (1) multiplying the number of hours listed on the remittance reports by fifty percent (50%) and adding that fifty percent (50%) figure to the hours listed on the remittance reports to arrive at the monthly unpaid hours; and (2) multiplying such number of hours by the current journeymen contribution rate for the geographic area of the Employer's place of business. The debt so computed shall be binding on the Employer and shall be deemed the amount due from the Employer for the purpose of any legal or administrative proceeding, and shall be in addition to any monies set forth by the Employer on any remittance reports or payroll records which it subsequently provides to the Fund for the audit period.

If the Fund implement a formula audit, the contributions must be paid by the Employer pursuant to this section regardless of the amount of bargaining unit work actually performed by the individuals, regardless of the amount of compensation paid, if any, to the individuals during the audit period, and regardless of whether the individuals are listed as employees on the Employer's records.

(g) If the Employer does not maintain or does not have in its possession records explaining, to the satisfaction of the Fund' Auditor, the payment of monies to an Employee, or to the Employee's

spouse, children, parents and/or siblings, the Fund is entitled to presume that the individual receiving the monies performed bargaining unit work and that the monies represent compensation for bargaining unit work performed by the individual. The Fund is entitled to recover contributions for such individual at the journeyman contribution rate for the applicable work area, with the hours of bargaining unit work calculated by dividing the Employer's payments to the individual by the journeyman wage rate in the applicable work area. Contributions must be paid by the Employer pursuant to this Section regardless of the amount of bargaining unit work actually performed by the individual, regardless of the amount of compensation paid, if any, to the individual during the month or calendar year, and regardless of whether the individual is listed as an employee on the Employer's records.

Section 4. Project by Project Remittance Reports.

The following Employers shall be required to file monthly remittance reports on a project by project basis, which reports must allocate the number of hours worked by employees to identifiable construction projects:

- i. Employers who have not been signatory to a collective bargaining agreement or written agreement requiring payment of contributions to the Fund for more than one (1) year or Employers who have not had one (1) year of covered employment requiring payment of contributions to the Fund.
- ii. Employers who have been delinquent or who have untimely remitted fringe benefit contributions to the Fund at least twice during any consecutive twelve (12) month period.

If Employers meeting the criteria set forth in Section 6(a)(i) can establish that they have had a one (1) year history of timely remitting contributions to another employee benefit plan either within or outside of the Iron Workers District Council's jurisdiction, they may be relieved of the requirement to file project reports.

(a) Each project remittance report must be received by the Fund on or before the fifteenth (15th) day of the month following the month during which the hours, for which contributions are required, are worked and must contain the following information:

- i. Name and address of the construction project;
- ii. Name and address of the property owner;
- iii. Name and address of the general contractor;
- iv. Names and social security numbers of all employees performing work on the construction project; and
- v. Number of hours worked by the employees on the construction project.

The foregoing project report must be provided to the Fund for each and every construction project where the Employer's employees performed work during the month.

(c) The Fund will notify the Employer of its obligation to file remittance reports on a project by project basis pursuant to this Section. Once notified, the Employer will be obligated to file its next remittance report on a project by project basis. If an Employer who is required to file project reports fails to do so, the Board of Trustees, or any duly authorized representative of the Board, may immediately refer the matter to Fund's Counsel for institution of legal proceedings. If it is necessary for the Fund's Counsel to perform services, including commencement of a lawsuit, to compel an Employer to file project by project reports, the Employer shall be liable for all attorneys' and paralegal

fees, court costs, disbursements and any other expenses incurred by the Fund in enforcing their right to the project remittance reports.

Section 5. Fiduciary Relationship.

Title to all monies paid into and/or due and owing to the Fund shall be vested in and remain exclusively in the Trustees of the Fund; outstanding and withheld contributions constitute Plan assets.

All monies received by an Employer from any source for work performed by employees represented by the Union shall be held in trust by the Employer. The Employer shall disburse the monies only for the purpose of paying wages owed to the employees represented by the Union and fringe benefit contributions owed to the Fund on behalf of the employees' labor. If the Employer owes any wages to the employees represented by the Union and/or owes any monies to the Fund on behalf of the employees' labor, it may not utilize the monies received by it in connection with its employees' labor for its own obligations or those of its officers, shareholders or directors.

Section 6. Effect of This Collections Policy.

This Collections Policy constitutes a rule of the Fund. To the extent this Collections Policy conflicts with the terms and provisions of the Fund' Trust Agreement or the Collective Bargaining Agreement, the terms and provisions of this Collections Policy will govern.

IN WITNESS WHEREOF, the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund executed this Collections Policy, effective the 1st day of November, 2013.

IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND VICINITY ANNUITY FUND

DATED: 10/18/13

Michael Attenberg
UNION TRUSTEE

DATED: 10/18/13

R. H. Stephenson II
EMPLOYER TRUSTEE

[Fund Office Letterhead]

[DATE]

[Contributing Employer's Name
Address]

**RE: Iron Workers District Council of Western New York and Vicinity Annuity Fund
["Fund"] Collection Policy**

Dear _____:

Enclosed is a copy of the Amended and Restated Collections Policy of the Iron Workers District Council of Western New York and Vicinity Annuity Fund [referred to as "Fund"], effective _____. The amendment includes the following: (1) a requirement that all contributing employers file a final report stating that they have no further work in the Union's territory (Section 1(g)); (2) memorialization of the Trustees' authority to allocate and disburse contribution payments to current obligations or past due obligations of the employer, as the deem appropriate (Section 1(h)); (3) memorialization of those records that will be reviewed by the Funds during the course of an audit (Section 3(a)); (4) the conditions under which employers are liable for auditing fees and expenses (Section 3(b)); and (5) presumptions that the Funds may invoke if the employer is unable to explain the payment of monies to certain employees (Section 3(g)). You are bound by the terms and conditions of this Amended and Restated Collections Policy in accordance with Article 8 of the collective bargaining agreement.

If any contributing employer fails to remit its reports and contributions by the thirtieth (30th) day of the month following the month during which the hours were worked by the employees, the Fund will immediately commence collection proceedings. It will utilize all avenues available to it to collect the delinquency. Specifically, the Fund or its counsel may contact property owners and general contractors to obtain payment, may file claims against payments bonds pledged in connection with the construction projects, and may commence a lawsuit or other legal or agency proceeding to collect the debt.

To avoid these measures and the assessment of interest, liquidated damages, attorneys' fees and costs, the Fund Office must receive your reports, contributions and deductions by the thirtieth (30th) day of the month following the month during which the hours were worked by the employees.

August 28, 2013

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We look forward to your cooperation. Should you have any questions, please contact me.

Sincerely yours,

Iron Workers District Council of Western
New York and Vicinity Annuity Fund

Suzanne Ranelli, Administrative Manager

SR/jld
Enclosure

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**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND
VICINITY ANNUITY FUND**

**AMENDMENT
TO
AMENDED RESTATED COLLECTIONS POLICY**

Pursuant to Article V, Section 8, of the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, the Collections Policy of the Iron Workers District Council of Western New York and Vicinity Annuity Fund is hereby amended by adding a new Section 1 (i) to read as follows:

Section 1 (i).

The rate of interest set forth in Section 1(b) is applicable to delinquencies uncovered by a payroll audit. In the case of a payroll audit conducted during the course of the Funds' routine auditing cycle and prior to referral of the matter to Funds' Counsel, the Trustees may reduce that interest rate to eleven percent (11%) per annum if the Employer promptly pays the contribution delinquency upon being notified of the audit results and the Trustees determine in their sole and absolute discretion that: (1) the Employer cooperated with the payroll auditor; (2) the delinquency consists of minor discrepancies or shortages of hours for employees previously reported by the Employer to the Funds; (3) the discrepancies or shortage are due to inadvertence or oversight; (4) the delinquency is small; (5) the Employer is signatory to the collective bargaining agreement; and (6) the Employer has not previously incurred a delinquency with the Funds.

THIS IS TO CERTIFY that the foregoing Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 30th day of July, 2014, to be effective as of the 30th day of July, 2014.

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK
AND VICINITY ANNUITY FUND**

DATED: 7/30/14

William H. Engler
UNION TRUSTEE

DATED: 7/30/14

W. Stephenson
EMPLOYER TRUSTEE

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND
VICINITY ANNUITY FUND**

**AMENDMENT
TO
AMENDED RESTATED COLLECTIONS POLICY**

Pursuant to Article V, Section 8, of the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, the Collections Policy of the Iron Workers District Council of Western New York and Vicinity Annuity Fund is hereby amended by adding a new Section 1 (i) to read as follows:


Section 1 (i).

The rate of interest set forth in Section 1(b) is applicable to delinquencies uncovered by a payroll audit. In the case of a payroll audit conducted during the course of the Funds' routine auditing cycle and prior to referral of the matter to Funds' Counsel, the Trustees may suspend liquidated damages and reduce the interest rate to eight percent (8%) per annum if the Employer promptly pays the contribution delinquency upon being notified of the audit results and the Trustees determine in their sole and absolute discretion that: (1) the Employer cooperated with the payroll auditor; (2) the delinquency consists of minor discrepancies or shortages of hours for employees previously reported by the Employer to the Funds; (3) the discrepancies or shortage are due to inadvertence or oversight; (4) the delinquency is small; (5) the Employer is signatory to the collective bargaining agreement; and (6) the Employer has not incurred a delinquency with the Funds during the audit cycle.

THIS IS TO CERTIFY that the foregoing Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 24th day of April, 2017, to be effective as of the 24th day of April, 2017.

IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND VICINITY ANNUITY FUND

DATED: 5/2/18



UNION TRUSTEE

DATED: 5/2/18



EMPLOYER TRUSTEE

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW YORK AND
VICINITY ANNUITY FUND**

**AMENDMENT
TO
AMENDED RESTATED COLLECTIONS POLICY**

Pursuant to Article V, Section 8, of the Amended and Restated Agreement and Declaration of Trust of the Iron Workers District Council of Western New York and Vicinity Annuity Fund, the Collections Policy of the Iron Workers District Council of Western New York and Vicinity Annuity Fund is hereby amended by adding a new Section 3 (h) to read as follows:

Section 3 (h).

Employers are subject to audit whenever the Trustees determine, in their sole and absolute discretion, that it is necessary. Notwithstanding the foregoing, the Trustees will audit on a three (3) year cycle all Employers that work or have worked 2,000 hours or more during the calendar year.

THIS IS TO CERTIFY that the foregoing Amendment was adopted by the Board of Trustees of the Iron Workers District Council of Western New York and Vicinity Annuity Fund on the 8th day of May, 2019, to be effective as of the 1st day of January, 2019.

**IRON WORKERS DISTRICT COUNCIL OF WESTERN NEW
YORK AND VICINITY ANNUITY FUND**

DATED: 5/16/19



UNION TRUSTEE

DATED: 5/16/19



EMPLOYER TRUSTEE